

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Comerica Bank,
a Texas Banking Association,

Plaintiff,

Case No. 23-cv-10191

vs.

Hon.

Eric W. Cash, an Individual,

Defendant.

MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.

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COMPLAINT

Plaintiff states:

1. Plaintiff Comerica Bank (“Plaintiff” or “Bank”) is a Texas banking association with its principal place of business in Dallas, Texas.
2. Defendant Eric W. Cash is an individual who resides at 1013 Carriage Lane, Smyrna, Georgia 30082.

3. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

4. There is diversity of citizenship under 28 U.S.C. §1332(a)(1) as Plaintiff is a Texas banking association with its principal place of business in Texas, and Defendant is a citizen and resident of the State of Georgia.

5. Defendant consented to jurisdiction and venue in the Eastern District of Michigan in § 12 of the Amended and Restated Guaranty dated April 8, 2022 (the “Guaranty”), which amended and restated the Guaranty dated December 28, 2021.

A copy of the Guaranty is attached hereto as **Exhibit 1**.

6. Defendant signed the Guaranty, attached as **Exhibit 1**.

7. Defendant signed the Guaranty dated December 28, 2021.

8. Cash Environmental Resources, LLC (“CER”), Cash Development, LLC (“Cash Development”), Green Energy Transport LLC (“Green”), and Renewable Energy Holdings of Georgia, LLC (“Renewable”) (each, individually, a “Borrower” and collectively, “Borrowers”) signed a Credit Agreement dated December 28, 2021, a copy of which is attached as **Exhibit 2**.

9. Borrowers signed an Installment Note dated December 28, 2021, in the amount of \$7,325,000.00 (“Term Note A”), a copy of which is attached as **Exhibit 3**.

10. Borrowers signed an Installment Note dated December 28, 2021, in the

amount of \$2,280,000.00 (“Term Note B” and collectively with Term Note A, the “Notes”), a copy of which is attached as **Exhibit 4**.

11. In the Guaranty, Defendant guaranteed payment of all amounts owed from Borrowers, jointly and severally, to Bank.

12. After Borrowers signed the Notes and Defendant signed the Guaranty dated December 28, 2021, and after Bank loaned to Borrowers the full amounts of the Notes, Bank learned that, at a hearing held on or about December 21, 2021, the Pickens County Board of Commissioners (the “Board”) passed a resolution mandating that County staff and the County Attorney take civil enforcement actions against persons that manage, operate and/or are otherwise associated with the Whitestone Valley Construction & Demolition Landfill.

13. The Whitestone Valley Construction & Demolition Landfill is part of the Real Estate Collateral, as that term is defined in the Credit Agreement.

14. In addition, the Board revoked all permits and licenses for this landfill a week before Borrowers signed the Credit Agreement and other Loan Documents.

15. Neither Defendant nor any of the Borrowers disclosed this event to Bank, either before or after they signed the Credit Agreement.

16. Borrowers are in default under the Credit Agreement and Notes for the following reasons (collectively, the “Stated Defaults”):

- a. Violation of Section 3.5 (no pending proceeding);

- b. Violation of Section 3.6 (compliance with laws);
- c. Violation of Section 4.6(b) (continue to operate);
- d. Violation of Section 4.6(d) (maintain Permits);
- e. Violation of Section 4.7 (compliance with Environmental Laws);
- f. Borrowers did not make all of the payments required in Schedule 2.1(d)(i)(A) and Schedule 2.1(d)(i)(B) of the Credit Agreement; and
- g. Borrowers did not make all of the payments required in 2.1(d)(i)(B) of the Credit Agreement.

17. Defendant and Borrowers signed a Letter Agreement dated April 8, 2022 (the “Forbearance Agreement”), attached as **Exhibit 5**.

18. In the Forbearance Agreement, Defendant and Borrowers acknowledged the existence of the Stated Defaults.

19. The term of forbearance expired on August 31, 2022.

20. Borrowers filed bankruptcy petitions on or about August 26, 2022.

21. There is currently due and owing under the Notes the following amounts as of January 10, 2023, being the “Indebtedness,” which includes interest that continues to accrue, a Forbearance Fee that continues to accrue, and Plaintiff’s attorney and consultant fees and related costs:

Obligations	Principal	Interest
Term Note A	\$6,867,187.50	\$53,820.74
Term Note B	\$2,137,500.00	\$17,576.99
Accruing Forbearance Fee	\$141,131.00	
Unused Commitment Fee	\$4,020.83	

Interest continues to accrue after January 10, 2023, at the rate of 9.37308000% per annum calculated on a 360 day year, which is a per diem of \$1,787.97 for Term Note A and a per diem of \$556.53 for Term Note B. The Accruing Fee continues to accrue at 2.00% per annum calculated on a 360 day year. In addition, the Indebtedness includes Bank's attorney and consultant/expert fees and other recoverable costs incurred to date and continuing to accrue.

22. Bank has accelerated the Notes.
23. Defendant waived demand and notice of acceleration in the Guaranty.
24. Bank has made demand for payment on Defendant and reiterates demand in this Complaint.
25. Defendant is in default of the Guaranty.
26. Defendant owes the full amount of the Indebtedness to Plaintiff.

Wherefore, Plaintiff demands judgment against Defendant in the full amount of the Indebtedness, together with interest, accruing forbearance fees, attorney fees and other fees and costs.

Miller, Canfield, Paddock and Stone, PLC

By: /s/ Steven A. Roach
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